

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 12-13-65164

HUD# 07-14-0176-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

MELROSE RETIREMENT COMMUNITY, LLC

350 Dublin Drive

Iowa City, Iowa 52246-6013

ARCHITECTS SCHIPPER KASTNER

3716 Ingersoll Avenue, Suite A

Des Moines, Iowa 50312-3440

RAKER RHODES ENGINEERING

4717 Grand Avenue

Des Moines, Iowa 50312-2001

SEYDEL CONSTRUCTION, INC

2871 Heinz Road, Suite C

Iowa City, Iowa 52240-8198

NEWBURY MANAGEMENT COMPANY

3408 Woodland Avenue, Suite 504

West Des Moines, Iowa 50266-6505

JODY THOMAS

350 Dublin Drive

Iowa City, Iowa 52246-6013

COMPLAINANT

ANGELA WILLIAMS

Commissioner, Iowa Civil Rights Commission

400 East 14th Street

Des Moines, Iowa 50319

and

IOWA CIVIL RIGHTS COMMISSION

400 East 14th Street

Des Moines, Iowa 50319

Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). Complainant alleged Respondents discriminated against persons with disabilities because the first-floor rental units at the subject property

do not meet the design and construction accessibility requirements of the Fair Housing Act (FHA) or the Iowa Civil Rights Act (ICRA). Complainant alleged Respondents violated the “usable kitchens and bathrooms” requirement (referenced as Requirement 7) of the Iowa Civil Rights Act and Fair Housing Act. Complainant specifically alleged the midline of the bathroom sinks in Units 132 and 136 was 18.25 inches from the adjoining wall, which is less than the minimum 24 inches required for a parallel approach. To the tester, the cabinet beneath the sink did not appear readily removable, making a forward approach impossible.

Description of the Subject Property

The subject property includes the common areas and the nine apartment units at the Assisted Living Building Addition for Melrose Meadows Retirement Community, 350 Dublin Drive, Iowa City, Iowa.

Respondents’ Defenses:

Respondents denied the tester’s observation that the bathroom cabinet was not readily removable. Respondents submitted photographs documenting the process of removing the cabinets. Respondents stated the wall and floor areas behind and under the cabinets are finished. Respondents maintain, because the cabinets are easily removable, the sinks are far enough away from the wall to allow for a forward approach, meeting the minimum design and construction accessibility requirement.

Report of Preliminary Findings:

The bathroom cabinet in Unit 130, one of the tested units, was found by two ICRC investigators inspecting the property to be easily and readily removable, as demonstrated by Respondents. ICRC investigators took measurements of the distance from the midline of the sink to the adjoining wall and of the knee-space dimensions in the same unit, and found them all to be compliant with the required parameters for a forward approach by a person utilizing a wheelchair.

In the same visit, ICRC investigators found the door to the public bathroom required 11 pounds of force to open, which exceeds the maximum specified by Section 404.2.8 of ANSI 2003 for interior-hinged doors [Requirement 2]. ICRC investigators also took four cross-slope measurements of the sidewalk section to the southeast of the entrance to Assisted Living Addition, all of which were greater than the

2% maximum allowed by Section 403.3 of ANSI 2003 [Requirement 2]. Finally, ICRC investigators measured the depth for the shower stall in Unit 130, which had a shower stall as the only bathing fixture, at 29.5 inches, which is less than the 36-inch depth required by Section 1004.11.3.1.3.3 ANSI 2003 [Requirement 7].

Respondents' Response to Report of Preliminary Findings:

In their written responses to the ICRC's Report of Preliminary Findings, Respondents stated:

The door to the public bathroom is a 20 minute fire door [required] to maintain the required protection of the corridor. The tested measurement of 11 pounds noted in the report is within the allowable opening force of 15 pounds for a fire door.

Respondents identified the State Fire Marshall Division of the Iowa Department of Public Safety as the appropriate administrative authority for determining compliance regarding fire doors at assisted living facilities. According to Respondents, the State Fire Marshall allows fire doors to have an opening force of up to 15 pounds, per Section 1008.1.2 of IBC 2006.

Respondents stated Respondent Seydel Construction will coordinate with a concrete vendor to replace the sidewalk section found to have cross slopes that were too steep with a sidewalk that has cross-slopes no greater than 2%.

Respondents stated Section 608 of ANSI 2003 allows three types of showers, including showers measuring 60 inches wide by 30 inches in depth, which corresponds to the dimensions for the shower stalls currently installed in their units, and are therefore compliant with the requirements of ANSI 2003, and therefore in compliance with the accessibility requirement of IBC 2006, a safe harbor.

Assessment of Deficiencies:

ICRC investigators verified the bathroom cabinets are removable, as demonstrated by Respondents during the ICRC inspection visit. ICRC determined the bathroom sinks are usable by someone utilizing a

wheelchair because the distance between the midline of the bathroom sinks and the adjoining walls is 18.25 inches in Units 130 and 132. The measured distance is greater than the 15-inch minimum required for someone utilizing a wheelchair to make a forward approach, as required by ANSI 2003.

Ljerka Vasiljevic, Senior Design and Construction Engineer for the State Fire Marshall, stated the door to the public bathroom at the Assisted Living Addition in the subject property is required to be a fire door, and therefore requires an opening force greater than the 5-pound limit allowed by ANSI 2003, to allow the door to remain closed in the event of a fire and prevent a fire from spreading to other areas. Ms. Vasiljevic stated almost all of the walls and doors in assisted living facilities are required to have a fire-safety rating. ICRC concedes this door is not subject to the 5-pound limit for the opening force for interior-hinge doors because it is a fire door with separate fire-safety requirements that supersede the accessibility requirements found in ANSI 2003 for interior doors.

ICRC concurs with Respondents' proposal to replace the non-compliant sidewalk section with one that includes cross-slopes no greater than 2%.

ICRC agrees with Respondents' assessment the current shower stalls are usable by persons utilizing a wheelchair, per Section 608 of ANSI 2003, because the depth of the shower stall at the midline of the width of the shower stall measures 30 inches to the location of the shower curtain, when fully closed, which is the minimum depth allowed by ANSI 2003 for the 60" x 30" shower-stall configuration.

Predetermination Settlement Agreement

A complaint having been filed by Complainant against Respondents with the ICRC under Iowa Code Chapter 216 and there having been a preliminary inquiry, including an inspection of the subject property, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Acknowledgment of Fair Housing Laws

1. Respondents agree there shall be no discrimination, harassment, or retaliation of any kind against any person for filing a charge under the ICRA; or because of giving testimony or assistance, or participating

in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden under the ICRA.

2. Respondents agree to refrain from committing any act of discrimination in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities on the basis of race, color, creed, sex, sexual orientation, gender identity, national origin, religion, disability, or familial status, in violation of the ICRA.

3. Respondents acknowledge the FHA and ICRA make it unlawful to discriminate in the sale or rental of a dwelling, or otherwise make unavailable or deny a dwelling, to a buyer or renter on the basis of disability. 42 U.S.C. 3604(f)(1); Iowa Code § 216.8A(3)(a).

4. Respondents acknowledge the FHA and ICRC make it unlawful to discriminate in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling on the basis of disability. 42 U.S.C. 3604(f)(2)(a) and Iowa Code § 216.8A(3)(b)(1)

5. Respondents acknowledge the FHA and ICRA make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford person with a disability an equal opportunity to use and enjoy a dwelling. 42 U.S.C. 3604(f)(3)(b); Iowa Code § 216.8A(3)(c)(2).

6. Respondents acknowledge as owners, developers, builders, or managers of covered multifamily dwellings – ground-floor units in a building consisting of four or more dwelling units built for first occupancy after January 1, 1992 – must build those dwellings in compliance with specific design and construction accessibility requirements, in accordance with the FHA and ICRA. Iowa Code §216.8A(3)(c)(3); 42 U.S.C. §3604(f)(3)(C).

HUD has described these accessibility requirements via regulation and in several publications, including the “Final Fair Housing Accessibility Guidelines.” 24 C.F.R. Part 100.200 et seq.; 56 Fed. Reg. 9,472. In the “Guidelines,” HUD presented the seven specific requirements as:

1. Accessible building entrance on an accessible route.

2. Accessible and usable public and common areas.
3. Usable doors.
4. Accessible route into and through the covered dwelling unit.
5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
6. Reinforced walls for grab bars.
7. Usable kitchens and bathrooms.

Voluntary and Full Settlement

7. The parties acknowledge this Predetermination Settlement Agreement (hereinafter referred to as the Agreement) is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.

8. The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.

9. The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of the Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.

10. Respondents agree the ICRC may review compliance with this Agreement. And as part of such review, Respondents agree the ICRC may examine witnesses, collect documents, or require written reports.

Release

11. Complainant hereby waives, releases, and covenants not to sue Respondents with respect to any matters which were, or might have been alleged as charges filed with the ICRC, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

Disclosure

12. Because, pursuant to Iowa Code §216.15A(2)(d), the ICRC has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. See Iowa Code §22.13.

Required Modifications or Retrofits

13. Respondents agree to make the following modification or retrofit to the subject property:

Accessible and Usable Public and Common Use Area

(a) The parties agree the cross slope and running slope of the sidewalk section adjacent to the southeast of the entrance to the Assisted Living Building Addition exceeds the maximum slope established in ANSI A117.1 2003.

(b) Respondents agree they will remove and replace the existing sidewalk to a measurement at or below a running slope of 5% and at or below a cross slope of 2% in compliance with the IBC 2006 (ANSI A117.1 2003), FHA, and ICRA (ANSI A117.1 1986).

Required Timelines for Completion of Modifications or Retrofits

14. Respondents agree to complete the modification of the sidewalk section to the southeast of the Assisted Living Building Addition within 90 days of receiving a closing letter from the ICRC.

Mandatory Reporting Requirement

15. Respondents agree, once the required modification is made to the sidewalk section southeast of the entrance to the Assisted Living Building Addition, the ICRC may

then inspect this area, and then report the results of its inspection, addressing any outstanding deficiencies, in writing and within 30 days of the inspection, to Respondents. If the inspection indicates outstanding deficiencies, Respondents shall correct all such deficiencies within a reasonable period of time as determined by the ICRC.

16. Within 30 days of the completion of the modification or retrofit, Respondents agree to submit photographs and any other relevant documents as evidence of compliance of the slope requirements, as outlined in paragraph 13 above.

17. The sale or transfer of ownership, in whole or in part, by any owner of the subject property will not affect any obligation to modify or retrofit the subject property as specified in this Agreement, unless Respondents have obtained, in writing, as a condition of sale or transfer, the purchaser or transferee's commitment to be bound by the terms of this agreement to complete all required modifications or retrofits as specified in this Agreement.

18. Within 30 days of receiving a closing letter from the ICRC, Respondents agree to provide a written statement to the ICRC, to the attention of Don Grove, Supervisor of Housing Investigations that specifies how each of the above-required modification or retrofit will be corrected.

Melrose Retirement Community, LLC

Date

RESPONDENT

Architects Schipper Kastner

Date

RESPONDENT

Raker Rhodes Engineering

Date

RESPONDENT

Seydel Construction, Inc.

Date

RESPONDENT

Newbury Management Company

Date

RESPONDENT

Jody Thomas

Date

RESPONDENT

Angela Williams

Date

COMPLAINANT

Beth Townsend, Director

Date

IOWA CIVIL RIGHTS COMMISSION
